

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1276 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA sd/-

and

HON'BLE MR.JUSTICE J.R.VORA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

JIVRAJ BHADABHAI

Appearance:

1. Criminal Appeal No. 1276 of 1986
MR PRACHCHHAK, APP, for Petitioner No. 1
MR BJ JADEJA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 28/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. The State of Gujarat has filed this Appeal

against the impugned Judgment and order dated 31.7.1986, passed by the learned Sessions Judge, Jamnagar, in Sessions Case No.2 of 1985, acquitting the respondent - accused for the charge u/s.302 I.P.Code as, according to him, the prosecution failed to prove its case against the respondent - accused beyond reasonable doubt.

2. It is the prosecution case that complainant Bava Devraj, P.W.2, Ex.11, lodged his FIR Ex.41 before the Police against respondent - accused for committing murder of deceased Ravjibhai @ Rajesh Parbat Patel, in an accident which took place on 13.9.1984 at 10.00 p.m. in the office of the Panchayat, by firing Gun shot from his licenced Gun.

3. To prove its case the prosecution examined Bava Devraj, P.W.2, Ex.11, Popat Kurji, P.W.5, Ex.18, Popat Ratna, P.W.6, Ex.21, Lakhu Govind, P.W.7, Ex.22, as eye witnesses. The motive behind the incident was of election of Sarpanch. At the end of trial the learned Judge, after appreciating the evidence of all the eye witnesses and other witnesses on record, was of the opinion that those eye witnesses must not have witnessed the actual incident and, therefore, he refused to place reliance on their evidence.

4. The learned Judge was not prepared to place any reliance on the oral testimony of complainant Bava Devraj P.W.2, Ex.11, on the ground that there were material discrepancy in his evidence and the complaint filed by him before the Police. The learned Judge has also observed in Para : 13 of his Judgment that though this witness Bava Devraj claimed to have witnessed the incident he could not see from where the bullet coming out from the Gun which was hardly at a distance of 2 to 4 ft. He had not even seen the cartridge at the place of incident. According to him he had not made any attempt to apprehend the accused of preventing him from firing at deceased Ravjibhai. As per the prosecution case number of persons collected at Panchayat office, but none of them have tried to caught hold the accused. The learned Judge has also observed that though there was Government dispensary in the village and though the doctor was available, the doctor was not called at the place of incident by the witnesses. He claimed that nobody had asked him about the incident nor he has stated about the incident to any one else. In Para : 16 of his evidence he has stated that he watched the incident and also stated that he was watching "Garbi" from the door. The question is that if he was actually watching "Garbi" then how he could witness the incident. On this ground also

the learned judge refused to rely upon his evidence. Because of this and many other reasons mentioned in the order the learned Judge refused to rely on his evidence. This is an acquittal Appeal and when the learned Judge has given cogent reasons for not relying on the evidence of this witness then certainly this Court, in an acquittal appeal, would like to take different view in the matter.

5. Another eye witness Popat Kurji, P.W.5, Ex.18, examined by the prosecution, is not relied upon by the learned Judge for valid reasons. The learned Judge had an opportunity to mark the demeanour of the deceased who has deposed before him. He has categorically stated in Para : 14 that eye sight of this witness was not perfect. He could not have identified the accused in the night hours at 10.00 pm going very near to him. If a person had fired gunshot then in ordinary circumstances no one would venture to go near the accused to catch him. This witness had admitted that the accused Jivraj Bhadabhai was the President of the committee of Ram mandir. This man has also one eye. He has admitted in Para : 9 of his cross examination that he, accused Jivraj, Sarpanch Ravjibhai (deceased) and others were sitting together and taking tea. He has even admitted that deceased and accused both were going on same Bullet in Kalavad. He has also admitted that in protest of Sarpanch (deceased) 9, out of 11, members of the Panchayat have resigned. He has also admitted that accused had not lost his temperament after loosing the election. After the incident was over the witness had gone to his house at about 10.00 to 10.30 pm whereas the incident had occurred in the evening.

6. It has come on record that when the accused came to the Panchayat office at the time of incident his attention was to see the "Garbi". His attention was focused at the place of incident only after the gunshot was fired. This shows that he has not actually seen the accused fired shot from his gun. According to this witness, after the incident Lakhu pushed the accused Jivraj and they presumed that this accused Jivraj must have fired shot. With this type of evidence it is difficult to place any reliance on the evidence of this witness and in our considered opinion the learned Judge has rightly refused to place any reliance on the evidence of this witness Popat Kurji.

7. Another witness Popat Ratna, P.W.6, Ex.21, who claimed to have witnessed the incident.

8. Similarly, the learned Judge, by giving valid reason in Para : 15 of the Judgment, refused to place any reliance on the evidence of other two eye witnesses Popat Ratna Ex.21, P.W.6 and Lakhu Govind, Ex.22, P.W.7. Their evidence does not tally with the evidence of Ballistic Expert. Lakhu Govind has admitted that cases of robbery and lurking house tress-pass were filed against him. He had refused to admit in his evidence before the Court that he had stated in his statement before the Police that he pushed the accused Jivraj.

9. Another eye witness Kishor Jivraj, Ex.24, has stated in his evidence that he had gone inside the Panchayat office only after hearing the gun shot and saw the accused coming out with gun in his hand whereas deceased Ravji was found bullet injuries. He had admitted that he had gone to the place after the incident was over.

10. Under the circumstances when the learned Judge has refused to rely on the evidence of the aforesaid eye witnesses by giving cogent reason then certainly this Court would not like to interfere with the judgment and order of acquittal after such a long period.

11. Before parting, we must also state that in this case surprisingly no arrest panchnama of the accused was made by the police for the reasons best known to them. It had also come on record that cartridge were not found at that time from the accused. Similarly Rupchand, who had recorded the FIR has not been examined. Lakhu Govind has received injuries, but no papers relevant with his injury had come on the record. The important witnesses Dhanji and Vasta were not examined by the prosecution. Above all, the motive is not at all proved in this case.

12. In view of the above, we do not see any reason to interfere with the Judgment and order of acquittal passed by the learned Sessions Judge in this Appeal as, in our considered opinion, the learned Judge has given cogent reason for acquitting the respondent - accused for the offence for which he was charged.

In view of the above discussion, this Appeal fails and is hereby dismissed. Bail Bonds of the respondent - accused stands cancelled.

(B.J.Shethna, J.)

Date : May 03, 2004

(J. R. Vora, J.)

sas

